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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,234	06/21/2001	Erik S. Anderson	4010-001	5887

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EXAMINER

ROWAN, KURT C

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 08/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/886,234

Applicant(s)
ANDERSON

Examiner
KURT ROWAN

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Feb 24, 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above, claim(s) 2 and 8-25 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 is/are allowed.
- 6) ☒ Claim(s) 3-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Claim Rejections - 35 U.S.C. § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kahng.

The patent to Kahng shows a fishing line connector 10 having a breakaway link 11 which is incorporated with underwater fishing gear 32, 34. In reference to claims 3-6, Kahng does not disclose the breaking load point, but it would have been obvious to a load point of between 50 pounds and 11, 300 pounds since routine experimentation would be used to determine the load points for the desired applications. See Kahng in column 2, lines 18-39. Kahng does not disclose whales or other cetaceans, but would provide a method of releasing fish. Hence, it would have been obvious to employ the breakaway link of Kahng to release whales or other cetaceans.

Kahng shows the structure to perform the intended use.

3. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kahng as applied to claims 3-6 above, and further in view of Collins.

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The patents to Kahng and Collins show fishing gear. Kahng has been discussed above and does not show a buoy. The patent to Collins shows a buoy 45, 51 connected to underwater fishing gear 57, 63. In reference to claim 7, it would have been obvious to provide Kahng with a buoy as shown by Collins for the purpose of locating the fishing gear a certain distance from the water surface.

Allowable Subject Matter

4.   Claim is allowed.

Response to Arguments

5. Applicant's arguments filed Feb. 24, 2003 have been fully considered but they are not persuasive. Applicant's arguments have overcome the rejection under 35 U.S.C. 251. In regard to claims 3-6, the patent to Kahng shows all of the method steps recited. Kahng discloses his connector for use with fishing tackle. Applicant method is directed at underwater gear which fishing tackle certainly is. Kahng does not teach away from the present invention since Kahng wants to save fishing tackle as disclosed in column 1, lines 31-41. Applicant states that the snap fastener, and/or various metal inserts, attached eyelets, all teach away from the present invention. However, it is not clear however, how they teach away from the present invention. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense

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necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In reference to claim 7, applicant argues that combination proposed by the examiner has nothing to do with the claimed invention. However, no method steps are recited that directly deal with reducing the possibility of injury to whales or other cetaceans. The proposed combination contemplates putting the underwater gear into water where whales or other cetaceans exist. While Kahng and Collins do not teach a method for saving whales, they show structure to perform the method and meet the claim limitations since the combination incorporates into underwater gear such as fishing tackle a breakaway link that will exhibit material failure when subjected to a load greater than a predetermined load.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **KURT ROWAN** whose telephone number is (703) 308-2321.

The examiner can normally be reached on Monday-Thursday from 6:30 a.m. to 5:00 p.m.

The fax phone number for the organization where this application or proceeding is assigned is (703) 306-4195 or (703) 305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

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A handwritten signature in black ink that reads "Kurt Rowan". The signature is written in a cursive style with a large, stylized 'K' and 'R'.

KURT ROWAN

PRIMARY EXAMINER

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July 10, 2003